Case Nos. B025920 and B038975

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff-Appellant,

and

MARY SUE HUBBARD

Intervenor-Plaintiff-Appellant,

v.

GERALD ARMSTRONG,

Defendant-Respondent.

10-21-91

OPPOSITION TO MOTION TO SEAL RECORD ON APPEAL; DECLARATION OF GERALD ARMSTRONG

Appeal from the Superior Court of the State of California for the County of Los Angeles
Honorable Bruce R. Geernaert, Judge
Case No. C420153

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CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff-Appellant, and MARY SUE HUBBARD, Intervenor-Appellant, v. GERALD ARMSTRONG, Defendant-Respondent.	Case Nos. B025920 & B038975 LASC No. C420153 OPPOSITION TO MOTION TO SEAL RECORD ON APPEAL

I

INTRODUCTION

Defendant Gerald Armstrong opposes plaintiffs' motion to seal the record on appeal. Plaintiffs have made no showing to justify sealing the record, by their own actions they have waived any privacy rights they are now seeking to protect, and such a sealing order would be both senseless and violative of rights senior to those plaintiffs hope to vindicate.

Plaintiffs ask this Court to seal these portions of the appellate record: in Appeal No B025920 the trial testimony of defendant and witnesses Vaughn Young and Laurel Sullivan, pages 57-60 and 251-277 in Appellants' Appendix and pages 4-28 of Respondent's Brief; and in Appeal No. B038975

Exhibits C, K, L and N in Appellants' Appendix. Plaintiffs claim that these portions contain discussions of or references to the documents which were the subject of the litigation below, and they argue that sealing these portions will preserve their property and privacy interests.

Plaintiffs have not only not demonstrated that they possess any property or privacy interests in the materials they seek to seal, but they have long since lost, through their employment of public courts in this case, their attacks on defendant in legal and other public arenas, and their unclean hands in the matter before this Court, the rights they once had.

But even if plaintiffs had not lost all their privacy rights in these materials the requested sealing would be an idle act in which the law does not engage. The vast majority of the pages plaintiffs want sealed are public documents which for over seven years have been broadly circulated. Sealing is also rendered a meaningless act because defendant could not be bound by such an order while plaintiffs continue to attack him and use themselves sealed materials in their attacks.

The superior rights regarding the materials plaintiffs want sealed are those of defendant whose safety from attack rests in part on the availability of information and the openness of court files, and those of the public who have a Constitutional right to precisely the kind of information these materials contain.

II

BY THEIR OWN CHOICES PLAINTIFFS SACRIFICED THEIR RIGHT TO SEAL THE RECORD

Although specifically discussing probate court files the California Court of Appeal in Estate of Hearst (1977) 67 Cal. App. 3d 777, 136 Cal. Rptr. 821 spells out the risk that every litigant who uses the courts accepts.

> "when individuals employ the public powers of state courts to accomplish private ends,[ ] they do so in full knowledge of the possibly disadvantageous circumstance that the documents and records filed[ ] will be open to public inspection." Id at 783

Plaintiffs complain that unlike the appellants in Hearst they had no way of recovering the subject documents other than bringing the lawsuit or "seizing the documents" from defendant, which choice plaintiffs considered inappropriate. But those were not plaintiffs' only options; they were but the options plaintiffs' "fair game" policy mandated. Had plaintiffs eschewed fair game, acted decently toward defendant and desisted in their attacks 1/ it is entirely conceivable that none of the subject documents would have been made public through the court proceedings. As this Court noted in its decision of July 29, 1991 in Church of Scientology of California v. Armstrong, 283 Cal. Rptr.917, 924 "the conflict was created by plaintiffs, who threatened Armstrong with harm."

When plaintiffs chose after settlement of the cross complaint to maintain their appeal from the trial court's decision they again did so with full knowledge of the disclosure in the Court of Appeal of the contents of the file that had been sealed by stipulation between the parties. In fact plaintiffs in their briefs cite to documents they had removed from the court file following the December 1986 settlement 2/ , and quote directly from the

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1/ See, e.g. Defendant's trial exhibits PP Suppressive Person Declare of Gerry Armstrong of February 18, 1982, and M Suppressive Person Declare of Gerry Armstrong of April 22, 1982.

2/ See, e.g. Appellants' Brief (dated December 20, 1989) p. 9 and 14, quoting from trial Exhibit F, and p. 26, discussing exhibit AAA.

trial transcript they now seek to seal 3/. In Champion v. Superior Court (1988) 201 Cal. App. 3d 777, 247 Cal. Rptr. 630, which set out the procedure to be followed when seeking an order to seal documents in appellate records, the Court stated:

> "Parties must also be careful not to enter into stipulations in trial courts or to acquiesce to trial court confidentiality requests expecting that the stipulations or rulings will control the filing or lodging of documents in the appellate courts." Id at 789.

The Champion Court also concluded

> "that a party seeking to lodge or file a document under seal bears a heavy burden of showing the appellate court that the interest of the party in confidentiality outweighs the public policy in favor of open court records." Id at 788.

Plaintiffs not only did not meet their burden, they did not even seek, until seven years had elapsed, to seal any of the documents in the record on appeal. This Court found that third party litigant Bent Corydon's motion to unseal the Armstrong court file, which was brought within two years of the sealing, was untimely. Plaintiffs' motion to seal is no less so.

Two days prior to filing their motion to seal the record on appeal plaintiffs filed a Petition For Review in the California Supreme Court from this Court's July 29 order. Again plaintiffs have cited to trial exhibits which

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3/ See, e.g., Appellants' Brief, from defendant's trial testimony, p. 14, "nothing but an intelligence organization." (R.T. 1678-79), p. 21, "lied from his earliest youth all the way through and he was lying to me currently" (R.T. 1929)

are not available to the reviewing court 4/ and to portions of the record they seek to seal.5/ Plaintiffs have not filed a request to seal the record on appeal in the Supreme Court, and they are using the record they seek here to seal to forward their cause. Judicial estoppel would prevent the granting of plaintiffs' motion.

Defendant detailed what he knew of plaintiffs' acts against him in violation of the December 1986 settlement agreement in his declaration of March 15, 1990, filed in this appeal in support of Defendant's Reply To Appellants' Opposition To Petition For Permission To File Response And For Time, and his declaration of December 25, 1990, filed as Defendant's Appendix. These declarations and the exhibits thereto are of substantial consequence to the determination of rights of the parties herein, and defendant requests that this Court take Judicial Notice of them pursuant to California Evidence Code§452(d) (court records),§455 and §459(b) (reviewing court has same power as trial court in determining propriety of taking judicial notice of a matter). This Court did not consider these declarations in its decision "as they were not considered by the trial court," Armstrong at 922, but they are relevant to the sealing issue and now may properly be considered.

While plaintiffs falsely accuse defendant of violations of sealing orders in this case they have themselves violated the sealing orders, including by

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4/ See, e.g. Petition For Review, p. 9, trial exhibit AAAA, p. 11, trial exhibit F, p. 16, trial exhibit PP.

5/ See, e.g. Petition For Review, p. 15, "nothing but an intelligence organization." (R.T. 1678-79), p. 16, confrontations with private investigators (R.T. 1726, 1728, 2448)

use of the very trial exhibits they removed from the court file. 6/ But plaintiffs have not only not curtailed their use of the materials they move to seal, they actively pervert what these materials state. Such a perversion is contained within plaintiffs' motion. When refering to defendant's act of obtaining from author Omar Garrison documents he would use in defending himself, and sending these documents to the lawyer who would and did defend him, plaintiffs religiously employ the words "stole", "stealing" or "stolen". Plaintiffs' motion, pp. 1, 3, 5, 6, 8, 17. Stealing is a "felonious taking." Black's Law Dictionary, 4th Ed. Rev., 1583. The trial court and this Court specifically found defendant's "taking" of the subject documents not felonious, but justified. Plaintiffs now seek to have hidden from the world not only defendant's testimony, which the trial court relied on to understand defendant's justification, but the trial court's decision in which the judge's

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6/ Exhibits F,G,H,J and K to defendant's declaration of March 15, 1990 are affidavits of Kenneth Long executed in October 1987 and filed in the case of Church of Scientology of California v. Russell Miller & Penguin Books Limited in the High Court of Justice, Case No. 6140 in London, England. Mr. Long, e.g., swears that defendant "refused to obey an order of the court, and retained possession of documents which he had been ordered to surrender to the court for safekeeping under seal," Ex. F, and "knowingly violated several court orders -- the August 24, 1982 court order to turn in all materials to the court and the June 20, 1984 court order sealing the documents.." Ex. J, Mr. Long appended to his affidavits several documents which had been entered into evidence at the trial in Armstrong and which plaintiffs had retrieved from the court file after the signing of the December 1986 "Mutual Release and Settlement Agreement," (emphasis added) and after the sealing pursuant to stipulation. See, e.g., Ex. F to defendant's declaration of March 15, 1990, affidavit of Kenneth David Long dated October 5, 1987. Document entitled "Wage and Tax Statement 1977" for "Gerald David Armstrong" is trial exhibit V; document entitled "Nondisclosure and Release Bond" is trial exhibit U.

understanding is expressed. Pp 251-277 in Appellants' Appendix in Appeal No. B025920 and Ex. C in Appellants' Appendix in Appeal No. B038975. Plaintiffs' intention is to seal parts of the record so that they can create confusion around what the record contains and misstate it in attacks on critics of their antisocial acts and attitude.

In the past two months plaintiffs have thrown caution to the wind in their attack on defendant's credibility, and are boldly using the fruits of a Scientology initiated illegal intelligence action they call the "Armstrong operation," which are included in the documents plaintiffs have "successfully" kept under seal in the Armstrong court file. Plaintiffs were apparently encouraged by this Court's decision in Armstrong which maintained the seal on the documents relating to the cross-complaint in the court file, because they have subsequently used them with abandon.

Plaintiffs-appellants utilize some tidbits from the "Armstrong operation" in their recently filed Petition for Rehearing in this Court, Petition for Rehearing, n.1, p. 6. They use their operation as grounds for a $120,792,850 lawsuit against 17 Federal (Treasury Department) agents. And they use it in an attempt to derail a lawsuit by former organization members in Federal District Court.

Exhibit A to the declaration of Gerald Armstrong filed herewith is a copy of the complaint filed August 12, 1991 in Church of Scientology International v. 17 Agents, No. 91-4301 SVW in US District Court, Central District of California. At page 14 is the claim that

> "The infiltration of the Church was planned as an undercover operation by the LA CID along with former Church member Gerald Armstrong, who planned to seed church files with forged documents which the IRS could then seize in a raid. The CID

> actually planned to assist Armstrong in taking over the Church of Scientology hierarchy which would then turn over all church documents to the IRS for their investigation." Ex. A.

Attorneys for the Scientology organization in the 17 Agents case are also attorneys of record in Armstrong and are before this Court now asking for another sealing order.

Exhibit B filed herewith is a pleading entitled Further Response to Order of July 2, 1985; Request for Stay; Memorandum of Points and Authorities in Support Thereof; Declaration of John G. Peterson filed January 22, 1986 in Armstrong along with transcripts of the illegal videotape operation. Plaintiffs used these documents at that time in an effort to prevent defendant from obtaining his preclear folders from plaintiff organization. At p. 6 Mr. Peterson avers that:

> "Armstrong has admitted, in a videotaped interview, to creating forged documents for placement in Church files for the sole purpose of giving the false appearance of unethical or illegal actions committed by the Church; and [ ] Armstrong has admitted, in a videotaped interview, his intention to commit perjury, as well as advising others that proof is not required to make allegations." Ex. B.

This is a matter which plaintiffs have insisted be sealed in the trial court's file.

Exhibit C filed herewith is a pleading entitled "Supplemental Memorandum in Support of Defendants' Motion to Dismiss Complaint with Prejudice; Declarations of Sam Brown, Thorn Smith, Edward Austin, Lynn R. Farny and Laurie Bartilson" filed August 26, 1991 in Aznaran v. Church of Scientology of California, et al, No. CV 88-1786 JMI in US District Court for the Central District of California. At p. 5 the Scientology organizations state:

> "in November 1984 [ ] Armstrong was plotting against the Scientology Churches and seeking out staff members in the Church who would be willing to assist him in overthrowing Church leadership. The Church obtained information about Armstrong's plans and, through a police-sanctioned investigation, provided Armstrong with the "defectors" he sought." Ex. C.

Exhibit D filed herewith is a pleading entitled "Reply in Support of Defendants' Motion for Summary Judgment Based on Statute of Limitations" also filed August 26, 1991 in Aznaran. At p. 34 the Scientology organizations state:

> "Armstrong's philosophy of litigation is that facts and the truth are irrelevant and that all that is required to prevail is to allege whatever needs to be alleged is spelled out in a videotape of Armstrong made in 1984 as part of a police-authorized private investigation of individuals, including Armstrong, who attempted to seize control of the Church." Ex. D.

Scientology's reply is signed by Eric Lieberman who has been plaintiffs' attorney of record throughout the Armstrong appeals.

Exhibit E filed herewith is defendant's declaration executed on September 3, 1991 and filed in Aznaran to refute the charges made by the Scientology organization in their pleadings (Ex. C and D filed herewith) and in another pleading entitled "Defendants' Opposition to Ex Parte Application to File Plaintiffs' Genuine Statement of Issues [sic] Re Defendants' Motions (1) to Exclude Expert Testimony; and (2) for Separate Trial on Issues of Releases and Waivers: Request that Oppositions Be Stricken" also filed in Aznaran August 26, 1991, and filed herewith as Exhibit F.

Since the December 1986 settlement, plaintiffs have engaged in assault after assault on defendant's character and credibility rather than honestly face the malevolent nature of their fair game doctrine and the acts this philosophy spawns. 7/ The portions of the appellate record they now seek to seal contain the trial judge's observations of defendant's credibility 8/ and the record in toto supports the judge's assessment of defendant's credibility and confutes plaintiffs' calumny.

7/ See, e.g., Exhibit E to declaration of March 15, 1990, a document circulated by plaintiff organization in 1987, "Armstrong's numerous false claims and lies on other subject matters;" Exhibits F, G, H, J and K to 3-15-90 declaration, affidavits of Kenneth Long accusing defendant of sealing order violations; Exhibit H, "Gerald Armstrong has been an admitted agent provocateur of the U.S. Federal Government;" Exhibit I to 3-15-90 declaration, affidavit of Sheila MacDonald Chaleff, "Mr. Armstrong is known to me to be a US government informant who has admitted on video tape that he intended to plant forged documents within the Church of Scientology and then using the contents to get the Church raided where these forged documents would be found and used against the Church;" Exhibit E to defendant's declaration of 25 December 1990, declaration of Kenneth Long dated March 26, 1990, "Armstrong had intentially perjured himself on numerous occasions, and had as well knowingly violated orders issued by judges at all levels ranging from the Los Angeles Superior Court to the Supreme Court of the United States;" Exhibit C filed herewith , at p. 6, defendant's "criminal attitude;" Exhibit D filed herewith, at p. 2,3, "the utter disregard of the truth that the Aznarans have made the trademark of their litigation effort, bears the unmistakable signature of Gerald Armstrong, whose theory of litigating against Churches of Scientology, as captured on videotape in 1984, is not to worry about what the facts really are, but instead to choose a state of "facts" that should survive a challenge by the Church and "just allege it."

8/ Memorandum of Intended decision in Armstrong, at p. 255 of Appellants' Appendix, " the basic thrust of [defendant's] testimony is that he did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the organization was aware of what he knew about the life of LRH, the secret machinations and financial

Plaintiffs assert that they "made every effort to vindicate their privacy interests without doing them further damage;" Motion, p. 11, but in reality they have worked very hard to destroy whatever rights they once had. The trial court found in 1984 that "neither plaintiff has clean hands." Memorandum of Intended Decision, Appellants' Appendix at p. 251. Plaintiffs have a history of destruction of evidence. Memorandum of Intended Decision, Appellants' Appendix at p. 264, July 29, 1991 Opinion at p. 6. Here they have used the documents they want sealed in attacks on defendant. Plaintiffs' hands are still unclean in connection with the controversy before this Court so must be denied the relief they seek. See, e.g., Moriarty v. Carlson (1960) 184 Cal. App. 2d 51, 7 Cal. Rptr. 282, quoting from Lynn v. Duckel, 46 Cal. 2d 845, 299 P.2d 236:

> "The rule is settled in California that whenever a party who, as actor, seeks to set judicial machinery in motion and obtain some remedy, has violated conscience, good faith or other equitable principle in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf to acknowledge his right, or to afford him any remedy." Id at 850.

Footnote 8 continued

activities of the Church, and his dedication to the truth;" p. 257 of Appellants' Appendix, "the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis (sic) Edward Walters, Omar Garrison, Kima Douglas and Homer Schomer to be credible, extremely persuasive, and the defense of privilege or justification established or corroborated by this evidence.....In all critical and important matters, their testimony was precise, accurate, and rang true;" . R.T. at 2511, Judge Paul G. Breckenridge, Jr., commenting to plaintiffs' counsel during cross-examination of defendant, "all you are doing is convincing me that this man has a fabulous memory."

III

SEALING THE DESIGNATED PORTIONS OF THE RECORD ON APPEAL WOULD BE NONSENSICAL

The trial testimony of defendant, Vaughn Young and Laurel Sullivan originated in 1984 in open court attended by public and press. The testimony remained available to the public in the court file until the December 11, 1986 stipulated sealing. Judge Breckenridge stated at that time:

> "Of course, there have been innumerable people in the interim who have come forward and examined the file. I haven't the slightest idea who all those people are, but certainly we can't go back and retract from them whatever they have seen or observed or copied."

The testimony has been public in the record on appeal since 1984.

The reporters' transcripts of proceedings were obtained by defendant throughout the month-long trial, and by its end he possessed the complete record. All the daily transcripts were loaned to Mrs. Brenda Yates whose husband owned a photocopy service. Mrs. Yates copied the entire record, made it available to the public, distributed it and advertised to sell it. Kenneth Long states in his declaration of October 8, 1987, filed in the Miller case in England:

> "Produced and shown before me now is exhibit "KDL 39" which is a true copy of several pages from a July/August 1984 publication entitled "The Journal of the Advanced Ability Center." Contained in the classified section of this publication is an advertisement from Brenda Yates offering for sale copies of the Armstrong Trial Transcripts." Exhibit K to March 15, 1990 declaration.

Mrs. Yates recalls that she sold, copied and delivered approximately twenty-five copies of the Armstrong trial transcript around that time. See declaration of Gerald Armstrong filed herewith.

Immediately following the trial Mrs. Yates also selected out of the record some one hundred fifty pages which she made into a pack and distributed. She recalls that she sold or gave away approximately one hundred copies of that pack of transcript pages.

The Armstrong trial decision, which is also often and generally called "the Breckenridge decision," and which plaintiffs seek to seal in the appellate record as pages 251-277 in Appellants' Appendix in Appeal No. B025920 and Exhibit C in Appellants' Appendix in Appeal No. B038975, has been a public document since June 20, 1984. It was affirmed by this Court on July 29, 1991.

The Breckenridge decision is forever a piece of international jurisprudence. It will continue to be used by litigants or governmental agencies as long as the undeniably litigious Scientology organization takes legal or factual positions contrary to Judge Breckenridge's findings. On the issue of unity of control, see, e.g. final adverse ruling dated July 8, 1988 issued by the Department of the Treasury to the Church of Spiritual Technology, filed herewith as Exhibit G. This ruling is now part of Church of Spiritual Technology v. US, No. 581-88T in the United States Claims Court. See item 945 at p. 70 of Plaintiffs' Exhibits to Complaint filed herewith as Exhibit H.

> "Witness testimony in the Armstrong case alleged that the project known as Mission Corporate Category Sort-Out (MCCS) had been undertaken by the Church of Scientology of California in 1980. The alleged purpose of the MCCS project was,

> according to the testimony of Laurel Sullivan, to devise a new organizational structure to conceal L. Ron Hubbard's continued control of the Church of Scientology." Final adverse ruling, p. 2.
>
> "Utilizing testimony any (sic) witnesses from the Armstrong case, the government successfully argued that Mr. Hubbard was a managing agent of the Church of Scientology of California as late as 1984. See the Founding Church [of Scientology of Washington, D.C., Inc.] v. Director, F.B.I., [et al 802 F. 2nd 1448 (1985), cert. den]." Final adverse ruling p. 4.

Plaintiffs themselves lament:

> "It is precisely the trial court's "findings" [ ] which other parties in other litigation continually have sought to invoke against the Church, either to support their own allegations or as collateral estoppel." Appellants' Opening Brief in Appeal No. B025920, n.31, p. 27.

The Breckenridge decision has been cited, discussed and quoted in countless newspaper articles and several books. See, e.g. Miller, Russell, Bare-Faced Messiah: The True Story of L. Ron Hubbard (1987) 370-372, filed herewith as Exhibit I; Corydon, Bent and Hubbard, L. Ron, Jr., L. Ron Hubbard: Messiah or Madman (1987), 238-248, filed herewith as Exhibit J; Atack, Jon, A Piece of Blue Sky: Scientology, Dianetics and L. Ron Hubbard Exposed (1990), 328-334, filed herewith as Exhibit K.

Although plaintiffs have moved to seal two copies of the Breckenridge decision in the appellate record, they have not moved to seal several other copies which have been filed in the same open record.9/ If plaintiffs intend

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9/See, e.g. Exhibit I to plaintiffs' Petition for Writ of Supersedeas filed December 19, 1988, Exhibit A to Real Party in Interest, Bent Corydon's Response to Petition for Writ of Supersedeas filed December 23, 1988, and

that only the two decision copies they have designated should be sealed and the other copies left unsealed and unaffected by the sealing, then they ask this Court to order a senseless act. If they intend that the authenticity and validity of not only the unsealed copies of the Breckenridge decision in the record on appeal but the perhaps thousands of copies of the Breckenridge decision world wide be rendered questionable, and the meaning of the decision and case be confused, they ask this Court to abet a conspiracy to obstruct justice.

When seeking to seal court records in which their antisocial nature and acts have been exposed, plaintiffs are fond of pronouncing that "[i]n the analogous area of trade secrets, it is routine for courts to seal judicial records." Motion at 9, Appellants' Opening Brief in Appeal No. B038975 n. 12 at 21. The application of the rationale of trade secrets law, however, reveals just how silly plaintiffs' effort to seal the record on appeal here is. Not only are there no trade secrets in the Breckenridge decision, or anywhere else in the appellate record, there are no non-trade secrets. The decision has been so widely distributed, is so publicly available and has been so universally used in legal and non-legal contexts that sealing it in the Armstrong appellate record would be, in the area of trade secrets, analagous to sealing in 1991 a Henry Ford patent for the internal combustion engine.

Plaintiffs also seek to have sealed pages 57 - 60 in Appellants' Appendix in Appeal No. B025920, TRO issued in the case below, August 24,

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Footnote 9 continued
Exhibit A to Defendant's Reply to Appellants' Opposition to Petition for Permission to File Response filed March 30, 1990, all in Appeal No. B038975; and Exhibit A to plaintiffs' Motion to Seal Record on Appeal now before this Court.

1982; pages 4-28 of Respondent's Brief in Appeal No. B025920; and Exhibits K, L and N in Appellants' Appendix in Appeal No. B038975, respectively Bent Corydon's Opposition to Motion to Unseal File, November 2, 1988, Plaintiffs/ Intervenor's and Cross-Defendant's Motion for Clarification and/or Reconsideration to Preserve Seal on One Document Previously Held Excluded from Evidence and Held to Be Protected by Attorney-Client Privilege, and Five Additional Documents Previously Excluded from Evidence and Maintained Under Seal, November 15, 1988, and Opposition to Motion to Reconsider, November 23, 1988.

While plaintiffs claim that the August 24, 1982 TRO has been under seal since December 1986, they themselves have used it publicly after that time. Kenneth Long stated in his affidavit of October 7, 1987, filed in the Miller case:

> "On August 24, 1982, the Honorable Judge John L. Cole of the Los Angeles County Superior Court issued a Temporary Restraining Order requiring Mr. Armstrong, his counsel, and all other persons participating or working in concert with Mr. Armstrong to surrender to the Clerk of the Los Angeles Superior Court all of the documents taken by Mr. Armstrong. There is now produced and shown to me marked as "KDL 15" a copy of the Temporary Restraining Order. As the Court will see, the terms of that Order specified that the documents surrendered to the Court would remain under seal, available only to the parties in the action and only for the purposes of that action." Exhibit F to defendant's declaration of March 15, 1990, at p. 7.

The TRO was created by plaintiff organization, it has been a public document since 1982, and it contains no conceivably private or confidential materials. The only effect of sealing it now would be confusion.

Exhibits K, L and N in Appellants' Appendix in Appeal No. B038975 have never been sealed. They comprise public documents, they were filed publicly, plaintiffs did not move to seal them in the trial court's record, and they have been public for almost three years. These materials, moreover, concern matters and documents which have been the subject of litigation between plaintiff organization and the United States Government from 1984 until the present. 10/

Respondent's Brief in Appeal No. B025920, in which plaintiffs seek to seal pages 4 to 28, has been part of the open record on appeal since January 1986. It is clear that this Court depended on these pages of the brief in its consideration of the facts and issues in the case. 11/ Plaintiffs do not ask that their briefs be sealed, even though they, like respondent's brief, cite to the trial transcript and documents admitted into evidence at trial. Sealing pages 4-28 of respondent's brief would have the effect, therefore, of leaving

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10/ See, e.g., regarding the MCCS tapes, U.S. v. Zolin, 809 F.2d 1411 (9th Cir. 1987), op. withdrawn, reh gr, en banc (9th Cir. 1987), 832 F. 2d 127, reh dismd, en banc, 842 F. 2d 1135 (9th Cir. 1988), am'd 850 F. 2d 610 (9th Cir. 1988), cert. gr. 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246, motion den. 489 U.S. 1005, 109 S.Ct. 1110, 103 L. Ed. 174 (1989) aff'd in part and vacated in part, 491 U.S. 994, 109 S. Ct. 2619, 105 L. Ed.469 (1989), on remand, 905 F. 2d 1344 (9th Cir. 1990), reh. den. en banc (unpublished order September 19, 1990); cert. denied, Church of Scientology v. U.S., ___U.S.___, 59 U.S.L.W. 3636 (March 18, 1991) Also see, regarding the "five documents," e.g., the "Order Allowing the United States of America to Examine and Copy Exhibits 5-K, 5-L, 5-O, 5-P and 6-O," filed in the Armstrong case August 27, 1991 and filed herewith as Exhibit L.

11/ See, e.g. documents shredding at Gilman Hotsprings, Resp. Bf. at 10,11; Armstrong Opinion at 919,920; defendant's November 1981 report regarding factual inaccuracies in Hubbard biographies, Resp. Bf. at 14,15; Armstrong Opinion at 920.

stand plaintiffs' statement of facts and thus confusing any reader of the record on appeal and allowing plaintiffs to restate and reinterpret the facts of the case. Although this would please plaintiffs it is unfair to defendant and the public.

Since all the materials plaintiffs want sealed are public records, sealing them would be an idle act. But even if it were found that any of the materials were not public and merited being considered private and confidential and therefore sealed, such a sealing would also be an idle act, since plaintiffs continue to attack defendant in present time concerning matters in the record on appeal, and he has a Constitutional right to defend himself, including by use of the "sealed materials."

It is well known maxim of jurisprudence that "the law neither does nor requires idle acts." California Civil Code § 3532, Stockton v. Stockton Plaza Corp. (1968) 261 Cal. App. 2d 639, 68 Cal. Rptr. 266. It is an idle act plaintiffs urge this Court to order.

IV

PLAINTIFFS HAVE SHOWN NO GROUNDS
FOR SEALING THE RECORD ON APPEAL

This Court prescribed in Armstrong what was necessary for its consideration of a motion to seal. "Should plaintiffs move to seal the record on appeal, we would require a much more particularized showing," than merely "that their pursuit of an action brought primarily for the purpose of protecting their respective privacy interests in the documents converted by Armstrong should not cause disclosure of the very information they sought to protect, through references in the record to such information." Id at 923. Yet plaintiffs' motion simply repeats that argument, and the portions they seek to seal do not come close to a "much more particularized showing."

Plaintiffs also argue, exactly as they did in their appeal from Judge Geernaert's order unsealing the Armstrong court file, that "Judge Breckenridge was aware in entering the sealing order, the privacy interest of appellants was exceptionally strong." Appellants' Brief in Appeal No. B038975 at 13, Motion at 10. But this Court stated in Armstrong: "We are unaware of any showing made before Judge Breckenridge, other than the parties stipulation, justifying sealing by the trial court of the record in this case." Id. at 921. Particularized showings were made during the trial document by document, at which time Judge Breckenridge made particularized rulings, admitting some documents into evidence, allowing portions of some documents to be read into the record, and upholding plaintiffs' privacy rights in some documents and maintaining them under seal.

Plaintiffs have also not followed the Court's guidelines for parties seeking to seal appellate records as laid down in Champion v. Superior Court, supra, 201 Cal. App. 3d 787, 247 Cal. Rptr. 624.

> A request to seal a document must be filed publicly and separately from the object of the request. It must be supported by a factual declaration or affidavit explaining the particular needs of the case. Where the contents of the to-be-sealed document become a focus of the argument for sealing, the request must refer the court to the to-be-sealed document, where the court may review its contents and any content-specific declarations and arguments about sealing it." Id. at 788.

Here, plaintiffs have appended to their motion as Exhibit A the Breckenridge decision, which is one of the documents they wish to have sealed. And they have not provided this Court with "content-specific declarations and

arguments about sealing" the portions of the record they have designated, but have provided only a non-specific declaration which but repeats the argument in the motion.

V

THE WAKEFIELD CASE DOES NOT SUPPORT SEALING THE RECORD IN ARMSTRONG

Contrary to plaintiffs' assertion that the case of Wakefield v. Church of Scientology of California (11th Cir. 1991) ___ F.2d ___, Slip. Op. 4625 forwards their argument for sealing the record on appeal, it undermines it. Plaintiffs claim that "[i]n that case, plaintiff Wakefield settled a case with defendant Church, and then repeatedly violated her settlement agreement by violating its confidentiality provisions." Motion at 14. In Armstrong it is plaintiff organization which has repeatedly violated the settlement agreement thereby forcing defendant to respond. Plaintiffs claim that defendant Scientology organization "brought contempt proceedings against Wakefield, and sought to have the proceedings in camera, in order to protect the very privacy rights placed at issue by Wakefield's conduct." Motion at 14. In Armstrong defendant seeks to have the court records kept unsealed and publicly available to protect himself from plaintiff organization's conduct. And where the district court was quoted in Wakefield as stating that "due to the plaintiff's complete and utter disregard of prior orders of this court, the court concludes that any restriction short of complete closure would be ineffective," in Armstrong it is plaintiff organization which has violated court sealing orders, and now nothing short of complete disclosure would be ineffective.

In this motion to seal the record on appeal plaintiffs aver that the non-disclosure conditions of the settlement agreement Wakefield had entered into with the Scientology organization were reciprocal, that what the organization sought to enjoin her from disclosing were "matters which Wakefield and the Church had agreed to keep confidential." Motion at 15. The 11th Circuit Court of Appeals apparently understood the non-disclosure conditions to be reciprocal when it stated that "[o]n September 9, 1988, the magistrate judge issued a report and recommendation which concluded that Wakefield had violated the settlement agreement, and the Church had fully complied with the agreement's terms and conditions." Id. at 4626. In a Motion to Delay or Prevent the Taking of Certain Third Party Depositions dated November 1, 1989 and filed in the case of Corydon v. Church of Scientology International, Los Angeles Superior Court No. C694401, and filed in Appeal No. B038975 as Exhibit D to defendant's declaration of March 15, 1990, defendant Scientology organization stated:

> "One of the key ingredients to completing these settlements, insisted upon by all parties involved, (emphasis in original) was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences within the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners; and (3) the terms and conditions of the settlement agreements themselves." 3-15-90 declaration, Ex. D. p. 4.

Yet in response to defendant's allegations in the March 15, 1990 declaration of violations of the settlement agreement by Scientology, organization attorney Lawrence Heller wrote in a declaration dated March 27, 1990 filed in the Corydon case in support of an Opposition to Motion for Order Directing

Non-Interference with Witnesses, and filed as Exhibit F to defendant's declaration of December 25, 1990 in Appeal No. B038975:

> "The confidentiality provisions of the Armstrong Settlement Agreement are nor (sic) in nature. Mr. Armstrong does have duties of confidentiality [ ] [h]owever, there are no reciprocal duties of confidentiality under the terms of the Armstrong Settlement Agreement that apply to any Church parties in the settlement."Defendant's Appendix, p89.

The Wakefield Court either did not have before it, or did not know that it had before it, such an anti-public policy punching bag agreement, so their opinion regarding violations of plaintiff Wakefield's settlement agreement is inapplicable here.

But the Wakefield opinion is applicable for its strong argument in favor of openness in our courts generally and in the Armstrong appellate record specifically, for parties such as plaintiffs herein will misstate and misuse secret agreements and secret proceedings just because they are secret.

VI

DEFENDANT'S INTEREST IN KEEPING THE RECORD ON APPEAL UNSEALED IS REAL

A sworn statement in a foreign court labeling defendant "an admitted agent provocateur of the U.S. Federal Government," 3-15-90 declaration Exhibit H, at 4, although easily viewed as hilarious, especially in light of what defendant really is, is, in this period of human history, something very calculated and sinister. The perverse use of an intelligence operation Scientology ran against defendant in 1984 in the organization's battle with the Criminal Investigation Division of the IRS in 1991 is heartbreaking. See,

Exhibit A at p. 14. The perjurious declarations of plaintiffs' attorneys are frightening. See, e.g. Exhibit E, defendant's declaration of September 3, 1991 in response to attacks by various lawyers; and defendant's declaration of December 25, 1990, filed in Appeal No. B038975 as Defendant's Appendix.

That defendant has been under attack from plaintiff organization since the December 1986 settlement is unquestionable. Since filing their motion to seal the record on appeal, plaintiffs have filed a motion in Los Angeles Superior Court to Enforce the Settlement Agreement, for Liquidated Damges of $100,000 and to Enjoin Future Violations. Defendant is filing this motion herewith as Exhibit M in a sealed envelope. It is his opinion, however, that the motion contains no part, document or evidence that is not a matter of public record, and he has no objection to this exhibit being unsealed by this Court.

It is clear to defendant that plaintiffs seek to destroy his credibility, his character and his person, and that one of their weapons is the sealing of his words and hiding the record of their actions against him. Safety for honest men lies in openness; safety for the dishonest lies in secrecy. As long as defendant's words are available to the public he enjoys some safety. When all his words have been sealed there remains no deterent to plaintiffs going a step further and sealing him.

This Court has a golden opportunity in this matter to send a message to plaintiffs to cause them to abandon their hope of enlisting the assistance of the judiciary to hide their past and confuse the truth, and to place their hope for a peaceful future in openness, not secrecy.

VII

THE PUBLIC'S INTEREST IN AN OPEN APPELLATE RECORD IN THE ARMSTRONG CASE IS OVERWHELMING

Quoting from Estate of Hearst, supra, this Court delineated the public policy regarding access to court records:

> "If public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice and favoritism. For this reason traditional Anglo-American jurisprudence distrusts secrecy in judicial proceedings and favors a policy of maximum public access to proceedings and records of judicial tribunals. [ ] And the California Supreme Court has said, 'it is a first principle that the people have the right to know what is done in their courts. (In re Shortridge (1893) 99 Cal. 526, 530 [34 P. 227,228].) Absent strong countervailing reasons, the public has a legitimate interest and right of general access to court records...." Armstrong, supra, 283 Cal. Rptr. at 921, Estate of Hearst, supra, 67 Cal. App. 3d at 784, 136 Cal. Rptr. at 824.

The Armstrong case vividly demonstrates why secrecy in court files is distrusted. Taking advantage of the sealed trial court file and a secret gag agreement, plaintiff organization used matters from the court file, including sealed trial exhibits, in litigation against opponents who did not have access to the same sealed materials. They attacked defendant with his own documents while threatening him with lawsuits if he defended himself, and they perverted the meaning of matters within the sealed file. Once the file was sealed, plaintiffs fought with all their legal might litigants, such as Bent Corydon, who sought access to evidence which, in an open court file, would have been available with as little effort as filling out a file request slip and handing it to a court clerk.

Plaintiffs herein are public figures, as was L. Ron Hubbard, whom most of the documents which gave rise to the litigation and much of the evidence adduced at trial concerned. Plaintiff organization advertises broadly and forcefully, recruits actively, seeks publicity, is notorious and very wealthy. Its doctrine of "fair game" toward its perceived enemies has been recognized and denounced by several courts including this one. Plaintiffs' history, policies and actions are matters of great public interest, and public policy therefore requires that the record on appeal, which deals with these history, policies and actions be kept unsealed and complete.

Plaintiffs do not seek to seal the record on appeal to vindicate privacy rights. As Judge Breckenridge stated in his famous decision: "The Guardian's Office, which plaintiff (Mrs. Hubbard) headed, was no respector of anyone's civil rights, particularly that of privacy." Decision at p. 12. Although plaintiff organization has renamed the Guardian's Office's and changed its head it has not altered its nature. It is plaintiffs' hope to conceal the facts, confuse the issues, pervert the truth, and deny the public the information it needs and has a Constitutional right to for making rational choices.

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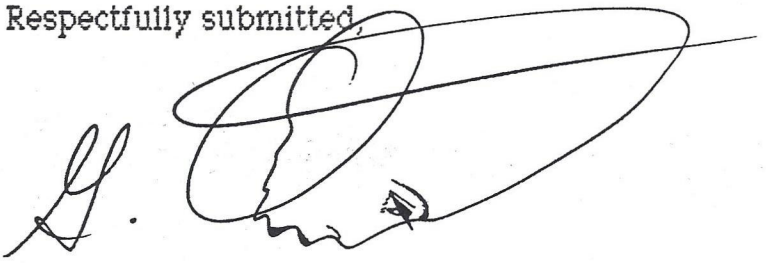
VIII

CONCLUSION

Plaintiffs have made no showing that would justify sealing the record on appeal, whereas plaintiffs' unclean hands, public policy, defendant's interests and the fact that all the to-be-sealed documents have been for years in the public domain overwhelmingly warrant keeping the record open.

Dated: October 14, 1991

Respectfully submitted,



Gerald Armstrong
In Pro Per

SERVICE LIST
(Opposition to Motion to Seal Record on Appeal)

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PROOF OF SERVICE BY MAIL

I am a resident of the County of Marin, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 711 Sir Francis Drake Blvd, San Anselmo, California 94960.

On October 15, 1991 I caused to be served the within OPPOSITION TO MOTION TO SEAL RECORD ON APPEAL on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at San Anselmo, California, addressed to the persons and addresses specified on the service list attached.

Executed on October 15, 1991 at San Anselmo, California.

I declare that the foregoing is true and correct.

L. Phippeny

L. Phippeny

Clerk of the Court
California Court of Appeal
Second District
Division Three
300 South Spring Street
North Tower, Second Floor
Los Angeles, CA 90013

October 14, 1991

Re: Church of Scientology
v. Gerald Armstrong
Case Nos. B025920 & B038975

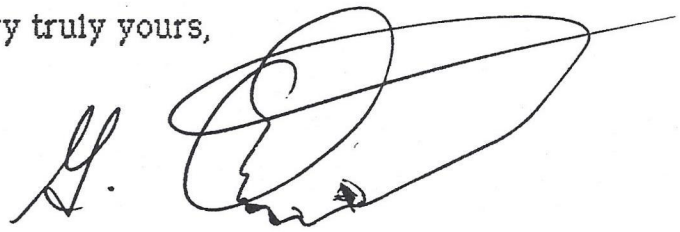
Dear Sir/Madam:

Please find herewith an original and four copies of defendant's Opposition to Motion to Seal the Record on Appeal and Application for Relief from Default.

Please file the original and three copies, and conform one copy and return to me in the accompanying self-addressed stamped envelope.

Thank you for your assistance.

Very truly yours,



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